

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JAN 16 2019 ★
LONG ISLAND OFFICE

JOSEPH MERMELSTEIN

PLAINTIFF

V.

UNITED STATES DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,

DEENDANTS

CV19 0312

HURLEY, J.

LOCKE, M. J.

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 522, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from PLAINTIFF by DEFENDANT Department of Justice ("DOJ") and its components Federal Bureau of Investigation ("FBI").

Jurisdiction and Venue

2. This court has both subject matter jurisdiction over this case and personal jurisdiction over the parties pursuant to 5 U.S.C. § 522(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(A)(4)(b).

3. PLAINTIFF JOSEPH MERMELSTEIN resides in Merrick, County of Nassau, State of New York.

4. DEFENDANT DOJ is a Department of the Executive Branch of the United States Government, and includes component entities FBI, USMS, DEA, and INS, The DOJ is an agency within the meaning of 5 U.S.C. § 522(f).

Government Agencies' Acquisition of Personal Information

5. JOSEPH MERMELSTEIN was indicted by the Federal Government for Medicare and Medicaid fraud, pleaded guilty and served time in prison until 2012. He was again indicted for a different claim, pleaded guilty and returned to prison for 1 year, released January 2015.

Plaintiff's FOIA Requests and Defendant's Failure to Respond

6. By separate letter to DOJ, FBI, PLAINTIFF submitted Freedom of Information Act ("FOIA") requests for "all records relating to JOSEPH MERMELSTEIN as attached hereto, EXHIBIT A.

Defendant DOJ's Failure to Timely Comply with Plaintiff's Request

7. A reply from the FBI was received February 12, 2018, indicating the request has been received and was being processed. On June 26, 2018, Arnold Koenig, Esq., attorney for JOSEPH MERMELSTEIN, received a letter indicating that there were 2,156 pages of records available, they would be released on CD for \$70.00, or \$102.80 for paper releases. A reply was made August 2, 2018 indicating a request for the five discs at \$70.00.

8. On September 24, 2018, Arnold Koenig, Esq., attorney received a call from Mrs. Wilson representing the FBI indicating that it will take five (5) years to send us the 2156 pages but this could be narrowed down to 700 to 900 pages and would be sent within two (2) years. Mrs. Wilson then stated she would review the documents as to what she felt were important and

notify me as to what the FBI could send in the near future. On October 10, 2018, she again spoke to Arnold Koenig, Esq., attorney and indicated that she felt 720 pages would be sufficient and that could be sent within the next two (2) years. Mr. Koenig refused and Mrs. Wilson said the FBI would send a letter relating to same. Mr. Koenig received a letter dated October 10, 2018, reinforcing the FBI's unwilling to send the papers requested within a reasonable time. All documents sent forth herein are attached hereto as EXHIBIT B. Mr. Koenig had then spoken to Mrs. Wilson who reiterated that we accepted the 720 pages we would receive same sometime in 2020. Mr. Koenig stated that this was unacceptable, and he would be required to bring suit.

9. To date DEFENDANT DOJ has not provided the records requested by PLAINTIFF in its FOIA request notwithstanding the FOIA's requirement of an agency response within twenty working days (or 30 working days).

10. PLAINTIFF has exhausted the applicable administrative remedies with respect to his FIOA'S request to DEFENDANT DOJ.

11. DEFENDANT DOJ has wrongfully withheld the request of records from the PLAINTIFF.

12. Mr. Koenig spoke to Mrs. Wilson on September 24, 2018 at which time she stated she would review the 2156 pages to determine if they could be reduced. On October 2, 2018 Mrs. Wilson again called Mr. Koenig and informed him that she had reviewed all the documents and they could be reduced to 720 pages. During the eight-day period that it took Mrs. Wilson to review 2156 pages, they could easily have been printed a hundred times over and sent to Mr. Koenig as requested. Instead Mrs. Wilson took I assume numerous hours reviewing 2156 pages of documentation, as it certainly would have taken Mr. Koenig or Mr. Mermelstein numerous hours to review same before coming to the conclusion that they were willing to send 720 pages within two years. Anyone in the United States could go to Costco and Costco would

copy 2156 pages for them within two hours or shorter. The PLAINTIFF herein does not want an review from Mrs. Wilson indicating what she thinks is important to the PLAINTIFF but wishes to obtain all 2156 pages as requested.

13. The FBI maintains the most modern computer system and network and has upgraded its networks hardware and software to the highest modern standards as set forth in its internet blog dated October 18, 2018, a copy attached hereto as EXHIBIT C.

14. The Court has long held the FBI must comply with the Freedom of Information Act Requests and provide answers to same with the twenty (20) day period set forth therein or as soon as possible thereafter. CAVEY V. DOJ 266 F. SUPP. 3d 241; 2017 US DIST LEXIS 113028; 2017 WL 3112816. In CAVEY the court directed the FBI to provide 2850 pages per month to the requesting party where it clearly shown that the FBI failed to timely provide the requester with documentation. The attorney in this matter, Arnold Koenig, Esq., is 82 years of age. The PLAINTIFF is in his sixties, and under medical care for various illnesses. Any of them could die within the five-year period set by the FBI.

15. It is clear that the FBI has wrongfully withheld the request of records from PLAINTIFF and intends to withhold same for an unreasonable length of time.

Requested Relief

WHEREFORE, PLAINTIFF prays that this Court:

- a. All DEFENDANTS to disclose the requested records in their entirety and make copies available to PLAINTIFF;
- b. Provide for expeditious proceedings in this action;
- c. Award the PLAINTIFF its costs and reasonable attorney's fees incurred in this action as allowed under FOIA, or one who has substantially prevailed in their lawsuit; and
- d. Grant such other relief as the court may deem just and proper.

Respectfully Submitted,



ARNOLD KOENIG, ESQ.
Attorney for the PLAINTIFF
595 Stewart Avenue, Suite 530
Garden City, NY 11530
(516) 640-4921
(516) 640-4922 – Fax

Eastern District File #:
Counsel for the Plaintiff